

APPENDIX F: LAWS AND REGULATIONS PERTAINING TO MOTORIZED USES IN ALASKA NATIONAL PARKS

NON-SUBSISTENCE RELATED MOTORIZED USES IN ALASKA NATIONAL PARKS

Executive Orders, the Law, and CFRs

Flowchart

(in chronological order, oldest to most recent)

EXECUTIVE ORDERS

Off-Road Vehicles. “Each respective agency head shall develop and issue regulations and administrative instructions...to provide for administrative designation of the specific areas and trails on public lands on which the use of off-road vehicles may be permitted, and areas in which the use of off-road vehicles may not be permitted, and set a date by which such designation of all public lands shall be completed.” (EO 11644).

EO 11644 was amended in 1977 to clarify agency authority to define zones of use by off-road vehicles on public lands. The following new Section (Section 9) was added to 11644: “Special Protection of the Public Lands. (a) Notwithstanding the provisions of Section 3 of this Order, the respective agency head shall, whenever he determines that the use of off-road vehicles will cause or is causing considerable adverse effects on the soil, vegetation, wildlife, wildlife habitat or cultural or historic resources of particular areas or trails of the public lands, immediately close such areas or trails to the type of off-road vehicle causing such effects, until such time as he determines that such adverse effects have been eliminated and that measures have been implemented to prevent future recurrence. (b) Each respective Agency head is authorized to adopt the policy that portions of the public lands within his jurisdiction shall be closed to use by off-road vehicles except those areas or trails which are suitable and specifically designated as open to such use pursuant to Section 3 of this Order.” (EO 11989)

GENERAL NPS REGULATIONS

Definitions. *Aircraft* means a device that is used or intended to be used for human flight in the air, including powerless flight...*Motor vehicle* means every vehicle that is self-propelled and every vehicle that is propelled by electric power, but not operated on rails or upon water, except a snowmobile and a motorized wheelchair...*Snowmobile* means a self-propelled vehicle intended for travel primarily on snow, having a curb weight of not more than 1000 pounds (450 kg), driven by a track or tracks in contact with the snow, and steered by ski or skis in contact with the snow. (36 CFR 1.4 (a))

Motor Vehicles (Including ORVs). Operating a motor vehicle is prohibited except on park roads, in parking areas and on routes and areas designated for off-road motor vehicle use. (36 CFR 4.10)

Aircraft. Operating or using aircraft on lands or waters is prohibited other than at locations designated pursuant to special regulations. (36 CFR 2.17)

Snowmobiles. The use of snowmobiles is prohibited, except on designated routes and water surfaces that are used by motor vehicles or motorboats during other seasons. (36 CFR 2.18)

ANILCA - THE ACT

Snowmachines, Motorboats, and Airplanes. Notwithstanding any other provision of this Act or other law, the Secretary shall permit...the use of snowmachines (during periods of adequate snow cover, or frozen river conditions in the case of wild and scenic rivers), motorboats, airplanes...for traditional activities (where such activities are permitted by this Act or other law) and for travel to and from villages and homesites. (Section 1110(a))

ANILCA-RELATED REGULATIONS

Snowmachines. The use of snowmachines (during periods of adequate snow cover and frozen river conditions) for traditional activities (where such activities are permitted by ANILCA or other law) and for travel to and from villages and homesites and other valid occupancies is permitted within the areas, except where such use is prohibited or otherwise restricted by the appropriate Federal agency. (43 CFR 36.11 (c))

Motorboats. Motorboats may be operated on all area waters, except where such use is prohibited or otherwise restricted by the appropriate Federal agency. (43 CFR 36.11 (d))

Fixed-Wing Aircraft. Fixed-wing aircraft may be landed and operated on lands and waters within areas, except where such use is prohibited or otherwise restricted by the appropriate Federal agency...The use of aircraft for access to or from lands and waters within a national park or monument for purposes of taking fish and wildlife for subsistence uses therein is prohibited, except as provided in 36 CFR 13.45. (43 CFR 36.11 (f)(1))

Helicopters. The use of a helicopter in any area other than at designated landing areas pursuant to the terms and conditions of a permit issued by the appropriate Federal agency, or pursuant to a memorandum of understanding between the appropriate Federal agency and another party, or involved in emergency or search and rescue operations is prohibited. (43 CFR 36.11 (f) (4))

Off-Road Vehicles. The use of off-road vehicles in locations other than established roads and parking areas is prohibited, except on routes or in areas designated by the appropriate Federal agency in accordance with Executive Order 11644, as amended or pursuant to a valid permit. (43 CFR 36.11 (g))

DENALI NATIONAL PARK DEFINITION OF “TRADITIONAL ACTIVITY” – JUNE 2000

Snowmachines (Snowmobiles). The rule defines “traditional activity”...for the portion of Denali National Park and Preserve formerly known as Mount McKinley National Park (Old Park). For that area only, traditional activity is: an activity that generally and lawfully occurred in the Old Park contemporaneously with the enactment of ANILCA, and that was associated with the Old Park, or a discrete portion thereof, involving the consumptive use of one or more natural resources of the Old Park such as hunting, trapping, fishing, berry picking or similar activities. Recreational use of snowmachines was not a traditional activity. If a traditional activity generally occurred only in a particular area of the Old Park, it would be considered a traditional activity only in the area where it had previously occurred. In addition, a traditional activity must be a legally permissible activity in the Old Park. (FR 6/19/00, Vol 65, No 118, Page 37836)

EXECUTIVE ORDERS

Executive Order 11644 (2/8/72): Use of off-road vehicles on the public lands

Section 1. It is the purpose of this order to establish policies and provide for procedures that will ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands.

Section 2 (3). "Off-road vehicle" means any motorized vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain; except that such term excludes (A) any registered motorboat, (B) any fire, military, emergency or law enforcement vehicle when used for emergency purposes, and any combat or combat support vehicle when used for national defense purposes, and (C) any vehicle whose use is expressly authorized by the respective agency head under a permit, lease, license, or contract.

Section 3 (a). Each respective agency head shall develop and issue regulations and administrative instructions...to provide for administrative designation of the specific areas and trails on public lands on which the use of off-road vehicles may be permitted, and areas in which the use of off-road vehicles may not be permitted, and set a date by which such designation of all public lands shall be completed. Those regulations shall direct that the designation of such areas and trails will be based upon the protection of the resources of the public lands, promotion of the safety of all users of those lands, and minimization of conflicts among the various uses of those lands. The regulations shall further require that the designation of such areas and trails shall be in accordance with the following ... (4) Areas and trails shall not be located in officially designated Wilderness Areas or Primitive Areas. Areas and trails shall be located in areas of the National Park system, Natural Areas, or National Wildlife Refuges and Game Ranges only if the respective agency head determines that off-road vehicle use in such locations will not adversely affect their natural, aesthetic, or scenic values...[

Section 9 (a). Notwithstanding the provisions of Section 3 of this Order, the respective agency head shall, whenever he determines that the use of off-road vehicles will cause or is causing considerable adverse effects on the soil, vegetation, wildlife, wildlife habitat or cultural or historic resources of particular areas or trails of the public lands, immediately close such areas or trails to the type of off-road vehicle causing such effects, until such time as he determines that such adverse effects have been eliminated and that measures have been implemented to prevent future recurrence.

Executive Order 11989 (1977)

EO 11644 was amended in 1977 to clarify agency authority to define zones of use by off-road vehicles on public lands. The following new Section (Section 9) was added to 11644: "Special Protection of the Public Lands. (a) Notwithstanding the provisions of Section 3 of this Order, the respective agency head shall, whenever he determines that the use of off-road vehicles will cause or is causing considerable adverse effects on the soil, vegetation, wildlife, wildlife habitat or cultural or historic resources of particular areas or trails of the public lands, immediately close such areas or trails to the type of off-road vehicle causing such effects, until such time as he determines that such adverse effects have been eliminated and that measures have been implemented to prevent future recurrence. (b) Each respective Agency head is authorized to adopt the policy that portions of the public lands within his jurisdiction shall be closed to use by off-road vehicles except those areas or trails which are suitable and specifically designated as open to such use pursuant to Section 3 of this Order."

GENERAL NPS REGULATIONS

36 CFR 1.4 (Definitions)

(a) *Aircraft* means a device that is used or intended to be used for human flight in the air, including powerless flight...*Motor vehicle* means every vehicle that is self-propelled and every vehicle that is propelled by electric power, but not operated on rails or upon water, except a snowmobile and a motorized wheelchair...*Snowmobile* means a self-propelled vehicle intended for travel primarily on

snow, having a curb weight of not more than 1000 pounds (450 kg), driven by a track or tracks in contact with the snow, and steered by ski or skis in contact with the snow.

36 CFR 4.10

(a) Operating a motor vehicle is prohibited except on park roads, in parking areas and on routes and areas designated for off-road motor vehicle use.

(b) Routes and areas designated for off-road motor vehicle use shall be promulgated as special regulations. The designation of routes and areas shall comply with Sec. 1.5 of this chapter and E.O. 11644 (37 FR 2887). Routes and areas may be designated only in national recreation areas, national seashores, national lakeshores and national preserves.

36 CFR 2.17

(a) The following are prohibited: (1) Operating or using aircraft on lands or waters other than at locations designated pursuant to special regulations.

36 CFR 2.18

(c) The use of snowmobiles is prohibited, except on designated routes and water surfaces that are used by motor vehicles or motorboats during other seasons. Routes and water surfaces designated for snowmobile use shall be promulgated as special regulations. Snowmobiles are prohibited except where designated and only when their use is consistent with the park's natural, cultural, scenic and aesthetic values, safety considerations, park management objectives, and will not disturb wildlife or damage park resources.

ANILCA - THE ACT

Section 1110

(a) Notwithstanding any other provision of this Act or other law, the Secretary shall permit, on conservation system units, national recreation areas, and national conservation areas, and those public lands designated as wilderness study, the use of snowmachines (during periods of adequate snow cover, or frozen river conditions in the case of wild and scenic rivers), motorboats, airplanes, and nonmotorized surface transportation methods for traditional activities (where such activities are permitted by this Act or other law) and for travel to and from villages and homesites. Such use shall be subject to reasonable regulations by the Secretary to protect the natural and other values of the conservation system units, national recreation areas, and national conservation areas, and shall not be prohibited unless, after notice and hearing in the vicinity of the affected unit or area, the Secretary finds that such use would be detrimental to the resource values of the unit or area.

ANILCA-RELATED REGULATIONS

43 CFR 36.11

(c) The use of snowmachines (during periods of adequate snow cover and frozen river conditions) for traditional activities (where such activities are permitted by ANILCA or other law) and for travel to and from villages and homesites and other valid occupancies is permitted within the areas, except where such use is prohibited or otherwise restricted by the appropriate Federal agency in accordance with the procedures of paragraph (h) of this section.

(d) Motorboats may be operated on all area waters, except where such use is prohibited or otherwise restricted by the appropriate Federal agency in accordance with the procedures of paragraph (h) of this section.

(f) Aircraft. (1) Fixed-wing aircraft may be landed and operated on lands and waters within areas, except where such use is prohibited or otherwise restricted by the appropriate Federal agency,

including closures or restrictions pursuant to the closures of paragraph (h) of this section. The use of aircraft for access to or from lands and waters within a national park or monument for purposes of taking fish and wildlife for subsistence uses therein is prohibited, except as provided in 36 CFR 13.45. The operation of aircraft resulting in the harassment of wildlife is prohibited. (2) In imposing any prohibitions or restrictions on fixed-wing aircraft use the appropriate Federal agency shall: (i) Publish notice of prohibition or restrictions in "Notices to Airmen" issued by the Department of Transportation; and (ii) Publish permanent prohibitions or restrictions as a regulatory notice in the United States Flight Information Service "Supplement Alaska." (3) Except as provided in paragraph (f)(3)(i) of this section, the owners of any aircraft downed after December 2, 1980, shall remove the aircraft and all component parts thereof in accordance with procedures established by the appropriate Federal agency. In establishing a removal procedure, the appropriate Federal agency is authorized to establish a reasonable date by which aircraft removal operations must be complete and determine times and means of access to and from the downed aircraft. (i) The appropriate Federal agency may waive the requirements of this paragraph upon a determination that the removal of downed aircraft would constitute an unacceptable risk to human life, or the removal of a downed aircraft would result in extensive resource damage, or the removal of a downed aircraft is otherwise impracticable or impossible. (ii) Salvaging, removing, possessing or attempting to salvage, remove or possess any downed aircraft or component parts thereof is prohibited, except in accordance with a removal procedure established under this paragraph and as may be controlled by the other laws and regulations. (4) The use of a helicopter in any area other than at designated landing areas pursuant to the terms and conditions of a permit issued by the appropriate Federal agency, or pursuant to a memorandum of understanding between the appropriate Federal agency and another party, or involved in emergency or search and rescue operations is prohibited.

(g) Off-road vehicles. (1) The use of off-road vehicles (ORV) in locations other than established roads and parking areas is prohibited, except on routes or in areas designated by the appropriate Federal agency in accordance with Executive Order 11644, as amended or pursuant to a valid permit as prescribed in paragraph (g)(2) of this section or in Sec. 36.10 or Sec. 36.12. (2) The appropriate Federal agency is authorized to issue permits for the use of ORVs on existing ORV trails located in areas (other than in areas designated as part of the National Wilderness Preservation System) upon a finding that such ORV use would be compatible with the purposes and values for which the area was established. The appropriate Federal agency shall include in any permit such stipulations and conditions as are necessary for the protection of those purposes and values.

DENALI NATIONAL PARK DEFINITION OF "TRADITIONAL ACTIVITY"

Federal Register: June 19, 2000 (Volume 65, Number 118)(Page 37876)

36 CFR 13.63(h), Snowmachines (Snowmobiles). The rule defines "traditional activity" as the term is used in the Alaska National Interest Lands Conservation Act (ANILCA) section 1110(a) and 43 CFR 36.11, for the portion of Denali National Park and Preserve formerly known as Mount McKinley National Park (Old Park). For that area only, traditional activity is: an activity that generally and lawfully occurred in the Old Park contemporaneously with the enactment of ANILCA, and that was associated with the Old Park, or a discrete portion thereof, involving the consumptive use of one or more natural resources of the Old Park such as hunting, trapping, fishing, berry picking or similar activities. Recreational use of snowmachines was not a traditional activity. If a traditional activity generally occurred only in a particular area of the Old Park, it would be considered a traditional activity only in the area where it had previously occurred. In addition, a traditional activity must be a legally permissible activity in the Old Park.